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RECENT CASES

CONTRACTS—LIABILITY OF BUILDING CONTRACTOR FOR SOUNDNESS OF STRUCTURE—REIMBURSEMENT FROM VENDOR OF MATERIALS.—FLANNERY V. ST. LOUIS ARCHITECTURAL IRON CO. (1916) 185 N. W. (Mo.) 760.—The plaintiff, a contractor employed to erect a garage, purchased steel trusses from the defendant. In order to furnish the trusses in the lengths specified, the defendant welded short rods together, and delivered them to the plaintiff with a latent defect at the place of welding. Due to this defect the roof collapsed a few months after the completion of the building. The plaintiff reconstructed the roof at an expense of $268.55, and then sued the defendant on an implied warranty of the quality of the structural steel. *Held,* that the expenditure made by the plaintiff in the reconstruction of the roof must be regarded as voluntary on his part and the defendant need not reimburse the plaintiff for the expense incurred.

The court assumed, at the start, that the plaintiff was not liable to the owner of the building, since the defect was hidden and the plaintiff had performed his part in a workmanlike manner; and in so assuming, followed the case of *Wisconsin Brick Co. v. Hood* (1899) 67 Minn. 329 (bricks made from clay apparently suitable). While the above is the only direct authority, a strong analogy to the position of the plaintiff in the principal case is presented by that of manufacturers or vendors of articles, who are held impliedly to warrant their products, in part manufactured by them, sound and fit for the purpose for which they know they are intended. Williston, *Sales,* sec. 232. And this is so, even though the failure has been due to a latent defect. *Murray Iron Works Co. v. De Kalb Electric Co.* (1902) 103 Ill. App. 78; *Randall v. Newson* (1877) 2 Q. B. D. 102. Thus a heating plant must operate successfully. *Ideal Heating Co. v. Kramer* (1905) 127 Ia. 137. So a boiler in a tug-boat should be sound and free from defects, although they are discoverable only by actual use. *The Nimrod* (1905) 141 Fed. 215; *cf. MacPherson v. Buick Motor Co.* (1916) 111 N. E. (N. Y.) 1050; 25 YALE LAW JOURNAL, 679 (a defective machine assembled and sent out by defendant as manufacturer). By acceptance of the article, latent defects are not thereby waived. *Cannon v. Hunt* (1902) 116 Ga. 452; *Bagley v. Cleveland Rolling Mill Co.* (1884) 21 Fed. 159. Thus, if the reasoning of the above analogy were to establish the liability of the present plaintiff to the owner of the building, the present defendant could in turn be held liable for the defect in the material furnished by him. Injury caused by using warranted goods in manufacturing other articles is recoverable, unless the buyer was negligent or unreasonable in failing to discover the defects before using the goods. Williston, *Sales,* sec. 614. And it would not then be necessary to wait until suit by the owner of the building before bringing this action against the defendant. *Donald v. Guy* (1903) 127 Fed. 228; see also *Randall v. Raper* (1858) E. B. & E. 82.

A. S. B.

CONTRACTS—CONTRACT OF EMPLOYMENT—PERFORMANCE TO SATISFACTION.—HANAFORD V. STEVENS CO. (1916) 98 ATL. (R. I.) 209.—The plain-

tiff, a travelling salesman, agreed to perform his duties in a manner satisfactory to the defendant. He was discharged on the ground that his services were not satisfactory in that he failed to notify the defendant of his whereabouts for a period of nine days. *Held,* that the contract required only performance to the satisfaction of a reasonable man, that the defendants' dissatisfaction was unreasonable, and that the discharge was wrongful.

The cases involving such stipulations are of two kinds. In one class the decision of the party to the contract is conclusive, his personal satisfaction being an absolute condition precedent. *Wood Reaping & M. Machine Co. v. Smith* (1883) 50 Mich. 571. In this class, the object of the contract is to gratify taste, or satisfy individual preference, as where a tailor agrees to make a suit to the satisfaction of a customer, or where an artist agrees to paint a portrait satisfactorily. *Schwartz v. Cohen* (1911) 129 N. Y. S. 464; *Claussen v. Vonnoh* (1907) 105 N. Y. S. 102. In these cases the promisee must act in good faith. *Hay v. Hassett* (1916) 156 N. W. (Ia.) 734; *Hawkes v. Daley* (1911) 85 Conn. 16. But if his dissatisfaction is honest, it is not material whether or not it is reasonable. *Crawford v. Mail and Exp. Pub. Co.* (1900) 163 N. Y. 404. In the second class are cases where there is some objective test of proper performance, a test which the court can apply as well as the individual. Here, the condition precedent is that performance shall, in the judgment of the court, pass the test successfully. *Keller v. Clifford* (1897) 165 Ill. 544; *Schmand v. Jandorf* (1913) 140 N. W. (Mich.) 996; *Duplex Safety Boiler Co. v. Garden* (1886) 101 N. Y. 387. Personal service contracts are often such that performance cannot be judged by an objective standard, and personal satisfaction is a condition precedent. The court in the principal case refuses to consider the contract as one involving person taste or fancy, but rather views it as one of the second class, involving merely mechanical or operative fitness. To the contrary, on a similar set of facts, see *Spring v. Ansonia Clock Co.* (1881) 24 Hun (N. Y.) 175; *Sax v. Detroit, G. H. & M. R. Co.* (1900) 125 Mich. 252.

S. J. T.

EVIDENCE—FORMER TESTIMONY—ABSENCE OF WITNESS IN CIVIL ACTION FROM JURISDICTION.—STEPHENS ET AL. V. HOFFMAN ET AL. (1916) 114 N. E. (ILL.) 142.—In an ejectment suit, testimony given at a former trial was offered in evidence. The witness had moved to another state subsequent to the former trial, but no reason was shown why his evidence might not have been taken by deposition. *Held,* that because of the possibility of securing a deposition, the former testimony was inadmissible.

In order that a party may be permitted to introduce testimony given at a former trial of the same issue between the same parties, the law requires that the unavailability of the absent witness be proved. See *U. S. v. Macomb* (1851) 5 McLean, 286, 292; *cf. Lyttle v. Denny* (1909) 222 Pa. St. 395 (deposition). In civil cases it is settled, according to the great weight of authority, that absence from the jurisdiction alone constitutes sufficient grounds for admitting such testimony, even though no